

03-583 LEOCAL v. ASHCROFT

Ruling below: CA 11, unreported decision in case No. 02-14992

QUESTION PRESENTED

The court below interpreted 18 U.S.C. § 16 to include DUI with serious bodily injury as a "crime of violence"--and therefore an "aggravated felony" as defined under § 101(a)(43)(F) of the Immigration and Nationality Act ("INA")--where the statute under which Petitioner was convicted required nothing more than negligence for conviction. That ruling conflicts with decisions of other United States Courts of Appeals and with the interpretation of the Board of Immigration Appeals ("BIA " or "Board").

The question presented is as follows:

Whether, in the absence of a mens rea of at least recklessness with respect to the active application of force against another, DUI with serious bodily injury is a "crime of violence" under 18 U.S.C. § 16 that constitutes an "aggravated felony" under § 101 of the INA ?

CERT. GRANTED: 2/23/04